

**YAEGER &
JUNGBAUER
BARRISTERS, PLC**

Via ECF Filing Only

June 2, 2015

Hon. Steven E. Rau
United States District Court
334 Warren E. Burger Federal Courthouse
316 N. Robert Street
Saint Paul, MN 55101

Christopher W. Bowman
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Re: *Bjornson, et al. v. Soo Line R.R. Co., et al.*
D.Minn. Court File No. 14-CV-04596-JRT-SER
YJB File No. 2011-4070

Paralegal
Julie A. Grinde
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Dear Judge Rau:

In follow up to my letter of February 24, 2015 (ECF No. 29), I am writing to advise the court of supplemental authority relevant to Plaintiff's Rule 12(f) Motion to Strike Certain Affirmative Defenses in Defendant Soo Line Railroad Company's Answer (ECF No. 10).

Part of Plaintiff's Motion addresses the question of whether or not a railroad's defense that an employee who seeks review of discipline under the Collective Bargaining Agreement ("CBA") between the railroad and the employee's union triggers the FRSA's election-of-remedies provision codified at 49 U.S.C. § 20109(f). *See* ECF No. 12, pgs. 4-12. In an order filed today, the Western District of Washington has rejected the defense, finding the decisions of the Sixth Circuit in *Norfolk S. Ry. Co. v. Perez*, 778 F.3d 507, 512-14 (6th Cir. 2015), and the Seventh Circuit in *Reed v. Norfolk S. Ry. Co.*, 740 F.3d 420, 426 (7th Cir. 2014), persuasive and finding that the election-of-remedies defense "fails as a matter of law." *Rookaird v. BNSF Railway Company*, No. 2:14-CV-00176-RSL, ECF No. 75 (W.D.Wash. June 2, 2015). While the question in *Rookaird* was framed as one for summary judgment rather than a motion to strike, the careful analysis makes clear that the Court would have reached the same conclusion under either standard.

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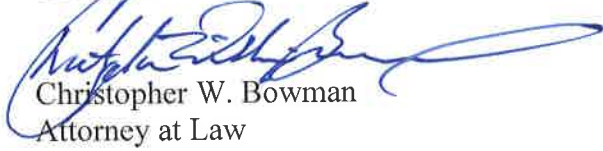
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I have included a copy of the Western District of Washington's order as an attachment to this filing, as the decision does not yet appear to be available on WestLaw.

Very truly yours,

YAEGER & JUNGBAUER BARRISTERS, PLC.



Christopher W. Bowman
Attorney at Law

Enc.

CC: All Counsel of Record (via ECF Filing)